

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

MANGUS COAL COMPANY, INC.,
a West Virginia Corporation,
JESSE A. JENNINGS,
Individually, and as a minority shareholder
of Mangus Coal Company, Inc.,
FRANKLIN M. JENNINGS,
Individually, and as a minority shareholder
of Mangus Coal Company, Inc.,

Plaintiffs,

v.

//Civil Action No. 12-C-63
Honorable Lawrance S. Miller, Jr.

CHRISTOPHER JENNINGS,
Individually, and as an officer, director, and
majority shareholder of Mangus Coal Company, Inc.,
DORIS JENNINGS,
Individually, and as an officer, director, and
shareholder of Mangus Coal Company, Inc.,
DARLENE MURRAY,
Individually, and as an officer, director, and
agent of Mangus Coal Company, Inc.,

Defendants.

MOTION TO REFER ACTION AS BUSINESS LITIGATION
TO THE BUSINESS COURT DIVISION

Comes now, this Court, *sua sponte*, pursuant to West Virginia Trial Court Rule 29.06, and moves the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia to assign the above-styled case to the appropriate Business Court Division for further hearing and disposition of the claims raised in this case.



STATEMENT OF THE CASE

Plaintiffs Jesse Jennings and Franklin Jennings are minority shareholders in Mangus Coal Company, Inc., a closely held West Virginia corporation. In their Amended Complaint filed June 19, 2012, the Plaintiffs contend that as a result of the death of Maurice Jennings, a mediation agreement was entered into by the parties as a result of prior litigation in Preston County,¹ wherein Jesse Jennings received two percent of the shares of Mangus Coal, Franklin Jennings received 39.5 percent of the shares of Mangus Coal, Christopher Jennings received 52.5 percent of the shares of Mangus Coal, and Dorris Jennings received two percent of the shares of Mangus Coal.²

Also as part of the mediation agreement, Plaintiffs contend that Christopher Jennings, then-President of Mangus Coal, signed a "Declaration of Assumption and Indemnity" regarding West Virginia Department of Environmental Protection mining permits. The Plaintiffs contend that this indemnity agreement indemnified and saved harmless the Estate of Maurice Jennings, the Maurice Jennings Trust, and all the fiduciaries of the Estate and Trust with regard to the DEP permits.

The Plaintiffs also contend that they, as minority shareholders, have requested financial records for Mangus Coal, original stock certificates, and information on the efforts being taken to comply with the indemnity agreement. The Plaintiffs allege that they have not received the requested information.

The Plaintiffs also contend that Defendant Christopher Jennings, who is the majority shareholder, director, officer, and at certain times President of Mangus Coal, is also the President of Jennings Excavating. The Plaintiffs allege that Christopher Jennings, on behalf of

¹ See Preston County Civil Action No. 99-C-127.

² The other shareholders are not parties to this civil action.

Mangus Coal, paid Jennings Excavating for work performed at a time when its income tax filing reflected that it was inactive, and that he has not produced detailed work invoices for the work performed. In addition to that, the Plaintiffs contend that Christopher Jennings, on behalf of Mangus Coal, transferred approximately 297 acres of real estate owned by Mangus Coal to himself in exchange for the debt incurred by Mangus Coal to Jennings Excavating. The Plaintiffs contend that the property was transferred for less than fair market value, and did not include the timber, oil and gas, or coal rights in the property.

The Plaintiffs further allege that approximately six months after the transfer of the 297 acres from Mangus Coal to Christopher Jennings, Christopher Jennings entered into an oil and gas lease with Mangus Land Services. Thereafter, Plaintiffs contend that Christopher Jennings transferred the property to his company, Jennings Excavating.

The Plaintiff retained an expert, David Duffus, and filed an expert report on August 1, 2013. Mr. Duffus's report details the complexities involved in this case. At issue are mining permit issues and bond forfeitures, excavation and equipment repair charges between Mangus Coal and Jennings Excavating with an alleged lack of descriptive invoices, debts from Mangus Coal to Jennings Excavating based on the excavation and repair charges that were used to offset payments on a transfer of land sold by Mangus Coal to its majority shareholder allegedly below fair market value, and allegedly deficient land appraisals.

Based on the representations of the Plaintiffs described above, the Plaintiffs allege the following causes of action in their Amended Complaint: breach of fiduciary duties, breach of the implied covenant of good faith and fair dealing, unjust enrichment, conversion, breach of contract, and civil conspiracy. The Plaintiffs state they are seeking to act derivatively, on behalf

of Mangus Coal Company, to enforce the indemnity agreement and to force the officers and/or directors to take the actions agreed to by the company.

On August 23, 2012, this Court entered an order denying the Defendant's motion to dismiss. Thereafter, an amended scheduling conference order was entered on February 21, 2013. On May 29, 2013, the Plaintiff filed a motion to extend the discovery deadlines, which this Court granted on June 4, 2013. On November 5, 2013, the parties filed a joint motion to continue because they wanted more time to complete discovery and file dispositive motions. As part of the motion, the parties stated that "[f]urthermore, the financial and environmental issues in this case are complex and involve specialized knowledge." (Joint Mot. to Continue, Nov. 5, 2013, at 2.) On February 28, 2014, the Plaintiffs filed a motion for leave to amend to add Jennings Excavating, Inc., as a party-defendant.

The Court set a hearing for March 31, 2014, to consider, *inter alia*, the Plaintiffs' motion for leave to amend. On March 21, 2014, ten calendar days before the hearing, the Defendants noticed their motion for summary judgment for the March 31, 2014 hearing. At that hearing, the Court ruled that insufficient notice had been given, thus no ruling on dispositive motions has yet been made. The hearing was reset for May 27, 2014. Prior to the hearing on May 27, 2014, the Court conducted a telephonic conference with counsel for the litigants, during which it informed them that it was going to file this motion to refer the case to Business Court.

ARGUMENT

- I. **The Honorable Chief Justice of the Supreme Court of Appeals of West Virginia should assign this case to the Business Court Division because it is both procedurally proper and because the parties involved in this matter would be benefited by specialized knowledge and familiarity with business law legal principles.**

In order for this case to be assigned to the Business Court Division, the Honorable Chief Justice must review the motion and decide first, whether it is procedurally proper in accordance

with the Trial Court Rules, and second, whether the motion and any reply filed thereto demonstrate that the case is appropriate business litigation for the Business Court Division.

A. The motion to refer this action to Business Court is procedurally proper.

Trial Court Rule 29.06(a)(1) states that “[a]ny party *or judge* may seek a referral of Business Litigation to the Division by filing a Motion to Refer to the Business Court Division in the circuit court where the matter is pending.” W. Va. T.C.R. 29.06(a)(1) (LexisNexis 2014) (emphasis added). Subsection (2) requires that the motion generally be filed within three months after the case is filed, “provided, however, that a judge may file the motion at any time, if it is determined the litigation qualifies as Business Litigation that may be resolved more expeditiously by referral to the Division.” W. Va. T.C.R. 29.06(a)(2) (LexisNexis 2014).

In this case, the movant is the circuit court judge presiding over the case. Therefore, although more than three months have elapsed since the case was filed, this Court has determined that the litigation qualifies as Business Litigation that may be resolved more expeditiously by referral to the Business Court Division. Accordingly, this motion has been filed properly pursuant to Trial Court Rule 29.06.

B. The litigants in this case will be benefitted by the specialized knowledge and familiarity with business law legal principles of the Business Court Division and will likely receive a more expeditious resolution of the controversy.

Trial Court Rule 29.04(a) defines “business litigation” as “one or more pending actions in circuit court in which . . . the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities[.]” W. Va. T.C.R. 29.04(a)(1) (LexisNexis 2014). The dispute must

present[] commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the

subject matter or familiarity with some specific law or legal principles that may be applicable[.]

W. Va. T.C.R. 29.04(a)(2) (LexisNexis 2014).

In this case, the Plaintiffs contend that this matter is in the nature of a derivative shareholder action. The case involves accusations of breaches of fiduciary duties by the majority shareholder and the directors/officers of the company to the minority shareholders. The case involves the internal governance of the company and accusations of self-dealing by the majority shareholder. Specialized knowledge in the law involving fiduciary duties of shareholders in closely held corporations would help lead to a fair, just, and expeditious resolution of the controversy. Further, Plaintiffs' contentions that this is a shareholder derivative action necessitates familiarity with the complexities of the law involving derivative actions.

This case also involves complex issues surrounding work invoices, land appraisals, and oil and gas leases. Specialized knowledge in this area of business, particularly natural resources extraction, would help lead to an expeditious resolution of the controversy. The parties themselves have previously moved this Circuit Court for an order of continuance because of the complex financial and environmental issues presented by the case.


Because of the complex nature of these issues, this Court believes that special treatment of this matter will improve the expectation of a fair, reasonable, and timely resolution of this controversy. The types of claims alleged in this case are not excluded by Trial Court Rule 29.04(a)(3). Accordingly, the claims and issues in this case should be classified as business litigation for the purposes of this referral motion.

Finally, this case has at least a 15-year history, beginning with the death of Maurice Jennings and the litigation resulting in the divvying up of the shares of Mangus Coal Company, Inc., to his heirs. An expeditious resolution of this controversy will greatly benefit the litigants.

CONCLUSION

For the reasons stated in this Motion, this Court respectfully requests the Honorable Chief Justice of the Supreme Court of Appeals of West Virginia to find that this action is business litigation that should be assigned to the Business Court Division pursuant to West Virginia Trial Court Rule 29.

Respectfully submitted,



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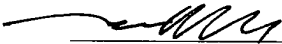
CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of June, 2014, I served the foregoing Motion to Refer Action as Business Litigation to the Business Court Division upon counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed as followed:

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